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Department of Water Resources

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ISB# 2591

BEFORE THE DIRECTOR  
OF THE IDAHO DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

\* \* \* \* \*

IN THE MATTER OF APPLICATION FOR )  
APPROVAL OF THE OCTOBER 10, 2003 )  
PRELIMINARY MITIGATION PLAN BY )  
NORTH SNAKE AND MAGIC VALLEY ) **NOTICE OF PROTEST**  
GROUNDWATER DISTRICTS )  
\_\_\_\_\_ )

The City of Twin Falls, Idaho, an Idaho municipal corporation, by and through its attorneys of record, Wonderlich & Wakefield, hereby formally protest the above application for the approval of the North Snake Ground Water District and Magic Valley Ground Water District Mitigation Plan filed with the Idaho Department of Water Resources on October, 10, 2003.

Protestant, City of Twin Falls, Idaho urges that the proposed Preliminary Mitigation Plan be rejected as a Mitigation Plan for the following reasons:

1. The City of Twin Falls is a surface water user in Water District 130 utilizing flows from Blue Lakes Spring under various water rights with priorities from May 26, 1949 to March 29, 1966. Blue Lakes Spring discharge, as measured by the U. S. Geological Survey has decreased from 238 cubic feet per second in 1950 to approximately 166 cubic feet per second in 2002 (see attached chart). The minimum

flow necessary for the City of Twin Falls to be provided full water rights is 178.8 cubic feet per second. The water supply for the City is therefore being impacted by the decreases in discharge of Blue Lakes Spring.(see attached table)

2. The decreases measured in Blue Lakes Spring are similar to those of other major springs in the Thousand Springs reach including Box Canyon, Crystal, Niagara, and Curren Tunnel. The measured discharge decreases are a result of junior priority ground water pumping, water management changes over the aquifer such as conversion of surface to sprinkler irrigation, and fluctuation in annual basin water supplies.

3. The proposed 40,000 acre feet of annual replacement water proposed by the Districts equates to 55 cubic feet per second of annual average increase in net ground water recharge. U.S. Geological Survey estimates of discharge from springs emanating from the aquifer in the Thousand Springs reach indicate a decline in spring flow of over 1400 cubic feet per second since about 1960. Blue Lakes Spring has, by itself, experienced a decrease of 72 cubic feet per second in the last 52 years. Therefore, the proposed 40,000 acre feet of replacement water will be entirely insufficient to make a significant improvement in Blue Lakes Spring or any other springs in the reach.

4. The provision in the proposed plan to allow a deficit of 80,000 acre feet in the replacement water account to accrue before any specific action is taken is unacceptable and should not be approved. The plan is based on speculation that certain actions will be taken and not on certainty of performance.

5. Explicit enforcement provisions are absent in the proposed plan and the means for insuring compliance are lacking. No specific procedures for monitoring compliance and/or documentation of aquifer or spring response are offered.

6. No specific procedures are identified to show that the replacement water proposed will, in fact, provide water to affected senior users in time and location to assure beneficial use.

In summary, the proposed plan is insufficient to make a significant improvement in the Blue Lakes Spring or any other springs in the reach, deficient in specificity, does not assure that replacement water for mitigation will be available, and provides no means of documenting results. More importantly, contributing factors, including pumping by junior priority right holders, are adversely impacting the City's water rights. For all of the above reasons, the Preliminary Mitigation Plan submitted by the North Snake and Magic Valley Ground Water Districts should not be approved.

DATED this 21st day of November, 2003.

WONDERLICH & WAKEFIELD

By   
Fritz Wonderlich

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the 21st day of November, 2003, I caused a true and correct copy of the **NOTICE OF PROTEST** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Jeffrey C. Fereday  
Michael C. Creamer  
Deborah E. Nelson  
Givens Pursley, LLP  
P.O. Box 2720  
Boise, ID 83701-2720

Hand Deliver \_\_\_\_\_  
U.S. Mail   X  \_\_\_\_\_  
Fax \_\_\_\_\_

North Snake Ground Water District  
152 E. Main St.  
Jerome, ID 83338

Hand Deliver \_\_\_\_\_  
U.S. Mail   X  \_\_\_\_\_  
Fax \_\_\_\_\_

Magic Valley Ground Water District  
453 West 900 North  
Rupert, ID 83350

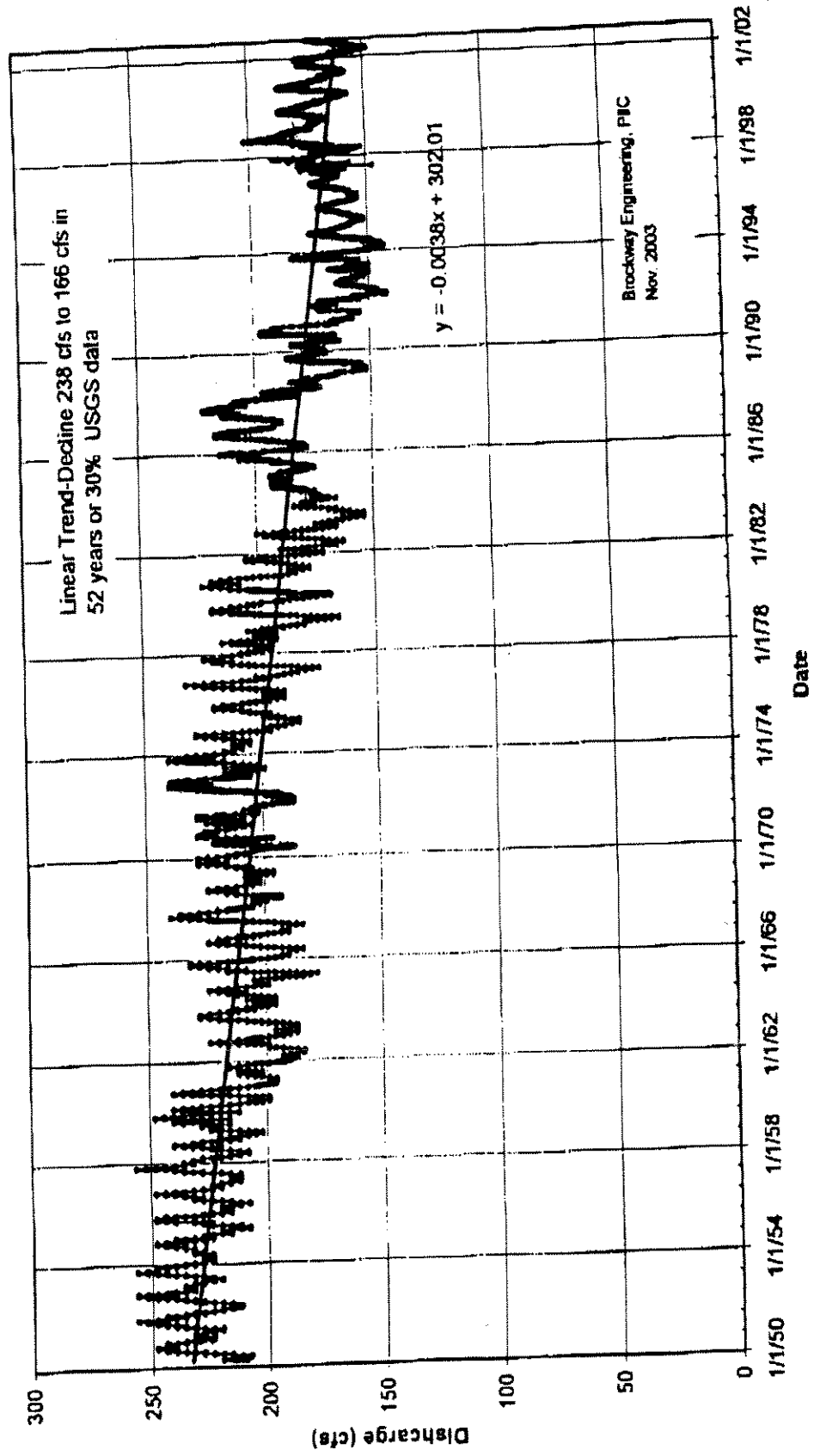
Hand Deliver \_\_\_\_\_  
U.S. Mail   X    
Fax \_\_\_\_\_



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Fritz Wonderlich

Blue Lakes Spring - Daily Discharge  
1950-2002



# ALPHAES CREEK WATER RIGHTS WATERMASTER LIST

Rank	Basin	Sequence	Split	Basis	Owner List	Source	Priority Date	Diversion Rate	Accumulated Div.
1	36	2083 A		Decreed	BLUE LAKES COUNTRY CLUB INC (Current)	ALPHEUS CREEK	1949/05/26	1.15	1.15
1	36	2083 B		Decreed	BLUE LAKES COUNTRY CLUB INC (Current)	ALPHEUS CREEK	1949/05/26	0.05	1.20
2	36	2356 A		Decreed	BLUE LAKES TROUT FARM INC (Current)	ALPHEUS CREEK	1958/05/29	99.83	101.03
3	36	2603 C		Decreed	PRISTINE SPRINGS INC (Current)	ALPHEUS CREEK	1964/04/17	25.3	126.33
3	36	2603 A		Decreed	CITY OF TWIN FALLS (Current)	GROUND WATER	1964/04/17	45	171.33
4	36	2646		Decreed	CITY OF TWIN FALLS (Current)	GROUND WATER	1966/03/29	7.47	178.80 <<<<<
5	36	7210		Decreed	BLUE LAKES TROUT FARM INC (Current)	ALPHEUS CREEK	1971/11/17	45	223.80
6	36	7239		Decreed	SIMPLOT MC COLLUM DEVELOPMENT CO (Current)	SPRINGS	1972/04/24	6	229.80
7	36	7427		Decreed	BLUE LAKES TROUT FARM INC (Current)	ALPHEUS CREEK	1973/12/28	52.23	282.03
8	36	7757		Permit	PRISTINE SPRINGS INC (Current)	ALPHEUS CREEK	1977/10/27	215	
9	36	15455		Decreed	SIMPLOT MC COLLUM DEVELOPMENT CO (Current)	SPRINGS	1987/03/01	0.46	
10	36	8593		License	BLUE LAKES COUNTRY CLUB INC (Current)	ALPHEUS CREEK	1991/07/19	0.7	

reauthorized flows only, below Blue Lake Trout

Source: Cindy Hodges Yenter-Watermaster Water District 130

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Attorneys for Clear Lakes Trout Company, Fisheries Development Company, Rim View Trout Company, and the Estate of Earl M. Hardy

BEFORE THE DEPARTMENT OF WATER RESOURCES OF  
THE STATE OF IDAHO

\_\_\_\_\_)  
IN THE MATTER OF THE APPLICATION )  
OF NORTH SNAKE GROUND WATER )  
DISTRICT AND MAGIC VALLEY GROUND )  
WATER DISTRICT FOR APPROVAL OF ) PROTEST  
PRELIMINARY MITIGATION PLAN )  
\_\_\_\_\_)

COME NOW, Clear Lakes Trout Company ("Clear Lakes"), Fisheries Development Company ("FDC"), Rim View Trout Company ("Rim View"), and the Estate of Earl M. Hardy ("Hardy Estate"), (collectively referred to as "Protestants"), by and through their attorneys, Ringert Clark, Chartered, and hereby protest the "Application for Approval of Preliminary Mitigation Plan" ("Application") submitted by the North Snake Ground Water District and the Magic Valley Ground Water District (collectively referred to as "Districts"). This Protest is filed pursuant to the Idaho Department of Water Resources' (IDWR) Notice of Application for Approval of Preliminary Mitigation Plan.

The Protestants' address is 1301 South Vista Avenue, Boise, ID 83705. The Protestants own and operate fish hatcheries that have the following water rights for fish propagation use:

<u>Facility</u>	<u>Water Right</u>	<u>Source</u>	<u>Priority Date</u>	<u>Quantity</u>
Clear Lakes Hatchery	36-02659	Clear Lakes Springs	6/23/1966	100 cfs
	36-07004	Clear Lakes Springs	7/21/1967	75 cfs
FDC Hatchery	36-07725	Billingsley Creek	11/29/1976	100 cfs
	36-07080	springs (Billingsley)	8/22/1969	11.54 cfs
	36-07731	springs (Billingsley)	7/8/1977	15 cfs
Rim View Hatchery	36-04032A	Niagara Springs	3/15/1912	10 cfs
	36-04032B	Niagara Springs	1/4/1951	10 cfs
	36-04032C	Niagara Springs	1/4/1952	5 cfs
	36-04032D	Niagara Springs	1/12/1962	15 cfs
	36-02680	Niagara Springs	6/6/1966	60 cfs
	36-07167	Niagara Springs	3/18/1971	50 cfs
Hatchery at White Springs	36-07176	White Springs	5/18/1971	38.8 cfs

The above-referenced water sources are hydraulically connected to and entirely dependent upon the Eastern Snake Plain Aquifer (ESPA), and are within the boundaries of Water District 130. Ground water pumping from the ESPA by members of the Districts reduces the supply of water at the headworks for each of these facilities. As a result, during 2003 and prior years, water supplies are inadequate to fill Protestants rights, which are senior to many and perhaps the majority of the water rights held by the Districts' members.

Shortly after Water District 130 was formed, Clear Springs Foods, Inc. (Clear Springs) submitted a "Water Delivery Call" to IDWR on June 7, 2002. IDWR administered this call against Clear Lakes Trout Company only. IDWR must administer the Clear Springs' call against all junior water rights affecting the spring supply, and the Director has acknowledged that he must do as soon as the Interim Stipulated Agreement For Areas Within And Near IDWR Administrative Basin 36 expires.



In May, 2003, each of the Protestants submitted demands to IDWR to direct the Water District 130 Watermaster to administer water rights in Water District 130 that divert water from the ESPA pursuant to I.C. § 42-607 in order to supply Protestants' prior rights. On October 10, 2003, the Director of IDWR issued an order denying the Protestants' demands. The Director's denial of the Protestants' demands is the subject of a lawsuit the Protestants filed in Ada County District Court against the Director and IDWR for a writ of mandate and declaratory judgment. The Protestants also filed a petition with IDWR to review issues pertaining to the Order that are not resolved in the District Court litigation.

The following are among the issues Protestants intend to raise during this proceeding:

1. The Application and IDWR administrative rule 43 of the *Rules for Conjunctive Management of Surface and Ground Water Resources* under which it was submitted (IDAPA 37.03.11.043), appear to contemplate that the Director could approve the proposed "Mitigation Plan," even if the Protestants and other holders of senior water rights do not agree to accept the proposed mitigation in lieu of administration and delivery of water rights according to priority as mandated by Article XV, § 3 of the Idaho Constitution and Title 42, chapter 6 of the Idaho Code. Such an interpretation of the administrative rule, and any corresponding action by the Director, would violate Article XV, § 3, the Protestants' constitutionally protected rights, and the Director's constitutional and statutory duties. Any compromise of Protestants' water rights, or "mitigation" of the injury and damages to Protestants rights and property interests caused by the Districts' members in lieu of administration according to priority, by way of a mitigation plan or otherwise, can only be enforced if the Protestants agree to the compromise or "mitigation."

2. IDWR cannot consider or approve the Application or any proposed mitigation plan until the Protestants' judicial and administrative actions regarding IDWR's failure to administer water rights in Water District 130 as required by Title 42, chapter 6 are resolved.

3. The Application does not meet the requirements of Rule 43. For example, the Application does not include an "[i]dentification of the water rights for which benefit the mitigation plan is proposed."


4. The proposed plan does not adequately mitigate for the injury to the Protestants and their water rights caused by the diversion of ground water from the ESPA by the Districts' members who hold junior water rights.

The Protestants reserve the right to raise additional issues at the appropriate time during the course of this administrative proceeding.

The Protestants request that IDWR stay further proceedings on the Application until Protestants administrative and judicial actions are resolved and/or the Protestants have reached agreement with the Districts regarding any proposed mitigation plan.

Dated this 24<sup>th</sup> day of November, 2003.

RINGERT CLARK, CHARTERED

By:   
Daniel V. Steenson  
Attorney for Protestants

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on this 24th day of November, 2003, he caused a true and correct copy of the within and foregoing document to be transmitted by U.S. mail to the following:

Michael C. Creamer  
GIVENS PURSLEY, LLP  
P.O. Box 2720  
Boise, Idaho 83701

  
\_\_\_\_\_  
Daniel V. Steenson